

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LOREN NETHERS,

Petitioner,

v.

CASE NO. 2:09-CV-324

JUDGE FROST

MAGISTRATE JUDGE ABEL

EDWARD SHELDON, WARDEN,

Respondent.

OPINION AND ORDER

On October 28, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, the Court **OVERRULES** Petitioner's objections. The Court **ADOPTS** and **AFFIRMS** the Magistrate Judge's *Report and Recommendation*. This action hereby is **DISMISSED**.

In this habeas corpus petition, Petitioner asserts that he was denied the effective assistance of trial counsel because his attorney failed to request a competency evaluation and denied due process on the same basis, and that he was sentenced in violation of *State v. Pelfrey*, 112 Ohio St.3d 422 (2007). The Magistrate Judge recommended dismissal of all of Petitioner's claims as procedurally defaulted. Petitioner objects to this recommendation. Petitioner states that he did not deliberately disregard the Rules of the Ohio Supreme Court, and thought that a "three day mailbox rule" applied to all state prisoner filings and appears to contend that prison officials deliberately delayed the mailing of his filing(s) so as to prevent him from obtaining review in the Ohio Supreme

Court. *See Objections.*

Pursuant to 28 U.S.C. § 28 U.S.C. 636(b), this Court has conducted a *de novo* review. The record is without support for Petitioner's allegations. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, this Court likewise concludes that Petitioner has failed to establish cause for his procedural default.

The Court **OVERRULES** Petitioner's objections. The Court **ADOPTS** and **AFFIRMS** the Magistrate Judge's *Report and Recommendation*. This action hereby is **DISMISSED**.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE